

RULE 11 HEARINGS BEFORE BOARD-NOTICE-PROCEDURE-REVIEW

- 11.1**
- (a)(1) All investigations of possible violations of the Act, Code of Professional Conduct, or the Rules of the Board shall be investigated by the Board investigator under the supervision of the Board's Compliance Committee.
(2) The Compliance Committee shall be comprised of one member of the Board, appointed by the President, and the Board's Executive Director.
 - (b) The major portion of possible violations may be expected to be of such nature that they can be disposed of informally by correspondence between the designee of the Board acting under the Board's instructions, and the person or persons involved.
 - (c)(1) An investigation shall not be deferred or suspended without the approval of the Board even though the person being investigated is made a party to civil litigation or is prosecuted in a criminal action, notwithstanding that either of such proceedings involves the subject matter of the investigation. The prosecution of an accused in such criminal proceedings shall not be a bar to disciplinary proceedings, nor shall the finding, judgment or decree of any court in such civil proceedings to which the Board is not a part be binding on the Board.
(2) The Board may defer an investigation of a case in which the accountant is a party to litigation, civil or criminal, provided that the accountant executes an agreement in a form acceptable to the Board providing that the terms of any settlement and the product of discovery generated during the litigation shall be produced upon request by the Board.
 - (d) The Board may conduct any investigation by a staff person and/or may designate investigating officer(s) to conduct investigations who shall be competent by reason of training or experience.
 - (e) No person being investigated has a right to be present or to be heard during the investigation, but before any finding is recommended such person being investigated shall be advised of the nature of the conduct which is being investigated and he shall be given an opportunity to make a statement personally or by counsel, verbally or in writing, sworn or unsworn, explaining, refuting or admitting the alleged misconduct which shall be considered by the Compliance Committee in making any finding and recommendation to the Board as to the disposition of the investigation.
 - (f) Upon completion of an investigation, the chair of the Compliance Committee shall present a summary of the result of the investigation and recommendation that the Board make a finding of probable cause to order a hearing or other action on alleged violations of the Act, Code of Professional Conduct, or these Rules or no probable cause of such a violation.

11.2 COMPLIANCE COMMITTEE RECOMMENDATION

- (a) The Board shall consider the recommendation by the Compliance Committee and may find
 - (1) probable cause,
 - (2) no probable cause or
 - (3) instruct the investigating officer(s) to further investigate the matter.
- (b) A finding of no probable cause by the Board shall be final and after such finding no further proceedings shall be had in the matter by the Board unless new or

additional evidence not available or made known to the Board at the time of the finding is thereafter brought to the attention of the Board. The Board shall promptly notify the person being investigated and any complaining party of the Board's finding of no probable cause.

(c) If the Board finds probable cause it may direct that one or more of the following actions may be taken:

- (1) disciplinary action against a licensee be initiated under these rules by the filing of a complaint setting forth the particular act or acts of conduct for which the person is sought to be disciplined,
- (2) an action be referred to the prosecuting attorney of the appropriate jurisdiction for possible action, or
- (3) other appropriate action be taken.

(d) Pleadings and motions shall be filed with the Board. When a complaint is filed, it shall be given a docket number and the answer and motions thereafter filed in the case shall refer to such docket number.

(1) If the board determines that a hearing is necessary, a copy of the Notice of Hearing shall be mailed, under the direction of the Board, by registered mail or certified mail, return receipt requested, to the respondent at his address as shown upon the records of the Board,. The Notice of Hearing must specify the time and location at which the hearing will be held. Hearings may not be held less than thirty days after the mailing of such notice. The notice of hearing shall state the legal authority and jurisdiction under which the hearing is to be held.

(2) All pleadings, motions and orders filed in the case, except applications for witness subpoenas, shall be served on each party. Services shall be made by delivery of a copy of the document to be served to the party or his attorney or by mailing it to him at his last known address. Delivery of a copy within this rule shall mean: handing it to the attorney or to the party or, leaving it at his office with his secretary or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place therein. Or, if the office is closed or the person to be served has no office, leaving it at his usual place of abode with some person of his family above fifteen (15) years of age and informing such person of the contents thereof. Service by mail shall be deemed complete upon mailing. When an attorney makes the service, a certificate of service conforming to that required by the Arkansas Rules of Civil Procedure shall be taken as prima facie proof of such service in compliance with these rules.

(e) Respondent shall answer the complaint, incorporating all defenses and admitting, denying or stating he is without knowledge of each allegation of the complaint. as a part thereof, respondent may challenge the sufficiency of the complaint and the jurisdiction of the Board. No defenses are to be raised by motion. The answer must be filed within twenty (20) days after receipt of a copy of the complaint by the respondent, unless the time for filing pleadings is extended by the president or secretary of the Board. Upon the failure of the respondent to file a timely answer or to appear at the scheduled hearing, the Board may proceed to hear evidence against the respondent and may enter such order as shall be justified by the evidence, provided, however, that within thirty days from the date of any order, upon a showing of good cause for failure to respond, the Board may reopen said proceedings.

(f) Licensee subject to a hearing has a right to information pursuant to A.C.A. § 25-15-208 (a)(3).

(g) Hearings upon motions may be deferred until the final hearing and whenever held, rulings thereon may be reserved until conclusion of the final hearing.

11.3 COMPUTATION OF TIME

(a) In computing any period of time prescribed or allowed by these rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday in which event the period shall run until the end of the next day which is neither Saturday, Sunday nor legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) When a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three (3) days shall be added to the prescribed period.

11.4 SUBPOENAS

(a) Subpoenas for the attendance of the witnesses and for the production of documents at depositions and hearings shall be issued by the Board upon its own initiative or the written application of any party. The application shall state the name and address of the witness for whom the subpoena is to be issued, the party on whose behalf the witness is expected to testify, the time and place for the witness to appear, and designated books, papers, documents or tangible things, if any, to be produced.

(b) Subpoenas shall be served as required by Rule 45, Arkansas Rules of Civil Procedure, and the party at whose instance the subpoena is issued shall be responsible for obtaining service of the subpoena.

(c) Witness fees, expenses and mileage, if requested by the witness, shall be paid by the party at whose instance the witness is summoned and shall be the same as prescribed by Rule 45, Arkansas Rules of Civil Procedure.

11.5 HEARINGS BEFORE THE BOARD

(a) If the hearing on the complaint, including the taking of testimony, is to be conducted by the Board, its presiding officer, other member thereof, or designated hearing officer, the Board, the presiding officer, other member, or designated hearing officer shall have the authority to:

- (1) Administer oaths and affirmations,
- (2) Rule upon offers of proof and receive relevant evidence,
- (3) Regulate the course of the hearing,
- (4) Hold conferences for the settlement or simplification of issues by consent of the parties,
- (5) Dispose of procedural requests or similar matters.

However, the Board shall determine any issue that would dispose of the matter without a determination on the substance of the matters at issue.

(b) The Board, at the conclusion of the final hearing or within a reasonable time thereafter, shall make findings of fact and conclusions of law as to each item of misconduct with which the respondent is charged and enter an order stating the effective date and providing for the appropriate disciplinary action and recovery of the costs of the proceedings and investigations pursuant to A.C.A. § 17-12-602.

(c) The Board shall promptly notify the respondent and any complaining party of its findings and order.

11.6 HEARINGS BEFORE A HEARING EXAMINER OR MEMBER OF THE BOARD

(a) In the alternative, the Board may appoint a hearing examiner or member of the Board, who may conduct hearings in the absence of the Board and shall have the authority to:

- (1) Administer oaths and affirmations,
- (2) Rule upon offers of proof and receive relevant evidence,
- (3) Regulate the course of the hearing,
- (4) Hold conferences for the settlement or simplification of issues by consent of the parties,
- (5) Dispose of procedural requests or similar matters.

(b) In the event the respondent challenges the sufficiency of the complaint or the jurisdiction of the Board a recommended ruling in favor of the respondent shall be referred to the Board for decision. A recommended finding against the respondent shall be included in the report.

(c) Within thirty (30) days after the conclusion of the final hearing before the hearing examiner or member of the Board, or within such extended period of time as may be allowed by the Board for good cause shown, the hearing examiner or member of the Board shall make a report to the Board which shall include

- (1) Recommended findings of fact and conclusions of law as to each item of misconduct with which the respondent is charged,
- (2) Recommendations as to whether or not the respondent should be found guilty of misconduct justifying disciplinary measures;
- (3) Recommendations as to the disciplinary measures to be applied, if any, and
- (4) A recommended form of order.

(d) A copy of the hearing examiner's or member of the Board's report shall be served upon the respondent.

11.7 REVIEW OF HEARING EXAMINER'S OR MEMBER OF THE BOARD'S REPORT

(a) Within ten (10) days after the hearing examiner or member of the Board files his report with the Board or within such extended time as may be allowed by the Board. The record of the proceedings, including the transcript of all the testimony and exhibits, shall be filed with the Board.

(b) Within thirty (30) days after the hearing examiner or member of the Board files his report, or within such extended time as may be allowed by the Board for good cause shown, the respondent may file with the Board exceptions to the hearing examiner's or member of the Board's report and may file a brief in support of such exceptions. If the respondent files a brief, the counsel prosecuting the case may, within twenty (20) days after the respondent's brief is filed with the Board or within such extended time as may be allowed by the Board for good cause shown, file a brief in reply. The parties shall file six (6) copies of the brief with the Board and

shall serve one (1) copy upon the opposing party or his counsel.

(c) The Board shall notify the respondent of the time and place of its meeting, at least ten (10) days in advance thereof, at which time it will review the hearing examiner's or member of the Board's report. The respondent or his counsel may attend and present oral argument in support of any exceptions filed under subparagraph (b) of this rule. If the respondent or his counsel presents such oral argument, the counsel prosecuting the complaint may present oral argument in reply. Each side will be allowed a stated amount of time designated by the Board for argument.

(d) The Board, after review of the record and the hearing examiner's report, and considering the briefs and oral argument, if any, shall within a reasonable time make findings of fact as to each item of misconduct with which the respondent is charged, conclusions of law and enter an order stating the effective date and the disciplinary action pursuant to A.C.A. § 17-12-602 et seq. or exonerating the respondent.

11.8 DISPOSITION OF PROCEDURAL REQUESTS

In the event the hearing is to be conducted pursuant to Rule 11.6 or no decision has been made by the Board to appoint a hearing examiner or member of the Board, the Board may appoint one of its members or a designated hearing officer to rule upon procedural requests or similar matters. Such rulings shall be reviewed by the Board at its hearing on the complaint or at the time it reviews the report of the hearing examiner or member of the Board.

11.9 EVIDENCE

The admission of evidence shall be governed by A.C.A. § 25-15-213(4).

11.10 RECORD OF PROCEEDINGS

(a) An accurate record of the testimony, evidence and all proceedings made before a hearing examiner, a member of the Board or before the Board shall be reported, transcribed, indexed and bound by a court reporter supplied by the Board. Any party may contract with the court reporter for a transcript of the proceedings.

(b) In the event that judicial review is sought of any Board action taken pursuant to these rules, the Board shall prepare or have prepared a certified transcript of record, including all pleadings, motions, or other requests, certified transcripts of all proceedings, evidence, the hearing examiner's or member of the Board's report and exceptions here to and the Board's finding of fact and order, or so much of the foregoing as is essential, and submit the same to the reviewing court.

(c) The party or parties seeking judicial review of an order rendered by the Board may apply to the Board for a stay of that order. The stay may be granted upon such conditions as shall be reasonable, and the order granting a stay shall specify the conditions upon which the stay is granted.

11.11 PUBLICATION OF DISCIPLINARY/ADMINISTRATIVE SANCTIONS

The Board may cause to be published in the Board's and NASBA's official publications (printed or electronic), and may publish in newspapers of general circulation in the state, the name of any certificate or registration holder who is the

subject of a reprimand, suspension of certificate or registration, revocation of certificate or registration, or surrender of certificate or registration in lieu of disciplinary action, or any other disciplinary action. Such publication shall not occur until a final Board order has been issued. The publication may contain a narrative factual summary of the actions and /or violations which were the basis for the disciplinary/administrative action.

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